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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,732	02/25/2004	James E. Haley	40030-10087	2743

21788            7590            03/22/2006

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[REDACTED] EXAMINER

CARTAGENA, MELVIN A

ART UNIT	PAPER NUMBER
	3754

DATE MAILED: 03/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/786,732	HALEY, JAMES E.
	<b>Examiner</b>	<b>Art Unit</b>
	Melvin A. Cartagena	3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 27 December 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-21 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
Paper No(s)/Mail Date _____	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-8, 10-11 and 14-21 rejected under 35 U.S.C. 102(b) as being anticipated by US 3,168,221 to Parker.

Parker shows a flexible bottle stopper as seen in Fig. 3, having a first end 15 adapted to fit into the opening of a container 15, a second end 19 adjacent to the first end and extending above the opening of the container, see Fig. 1, an air passage 22 extending longitudinally beyond the length of the first end in a direction away from the second end, see Figs. 1 and 3, the second end extends about 0.1 inches and is sloped about 50 degrees to aid pouring and provide a visual location of the pouring end and the air passage, an anti-drip recess 20, see column 1, lines 52-57, the air passage and the pouring spout are spaced at 180 degrees, a cap 24 attached to the stopper by a flexible strand 25 and seals at the ring 26.

#### In reference to claims 18 and 19:

Parker shows a stopper and spout to be used on a container for pouring the content of the container that includes the steps of visually determining the proper orientation of the spout and tilting the container in that orientation to pour.

#### In reference to claims 20 and 21:

Parker shows a stopper manufactured with the characteristics described above.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 3,168,221 to Parker in view of US 4,128,189 to Baxter.

Parker shows all claimed features as discussed above but is silent about the spout having different colors. Baxter shows a spout and cover of different colors. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to use any various color in the device of Parker as taught by Baxter in order to fit into a harmonious color style with the remainder of the container including the label on the container.

5. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 3,168,221 to Parker in view of US 5,228,603 to Pham et al.

Parker shows all claimed features as discussed above except for the filter material being of the same material as the spout and a flexible strand at about 120 degrees from the spout. Pham shows a spout with a filter material 76 made of the same material as the spout and a flexible strand 312 at about 120 degrees from the spout 305. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the device of Parker to include a filter made of the same material as the spout and a stand as taught by Pham to facilitate manufacture of the spout by making the spout and the filter in one molding process and having a stand to prevent miss placing the cap.

***Response to Arguments***

6. Applicant's arguments with respect to claims 1, 17, 18 and 20 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Beall shows a fitment for container. Mahler shows an adjustable pouring spout. Anderson shows a side-pouring dispenser.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin A. Cartagena whose telephone number is (571) 272-4924. The examiner can normally be reached on M-F (7:30AM to 4:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Y. Mar can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MAC 3/20/06  
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